



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 12, 1996

Mr. Richard M. Abernathy  
Law Offices of Abernathy, Roeder,  
Robertson & Joplin  
P.O. Box 1210  
McKinney, Texas 75069-1210

OR96-0175

Dear Mr. Abernathy:

The Plano Independent School District (the "district") received two requests for information under chapter 552 of the Government Code.<sup>1</sup> The requests were for information about a complaint filed with the Texas Ethics Commission. The district has supplied exhibits 1 through 7 as responsive to the request assigned #24612.<sup>2</sup> The district has supplied exhibits 1 through 15 as responsive to the request assigned #24211. You have asked this office to determine if the information at issue must be released.

You contend that the documents are confidential under section 571.140 of the Government Code and must therefore be withheld from disclosure pursuant to section 552.101 of the act as information that is "confidential by law, either constitutional, statutory, or by judicial decision." Section 571.140 provides:

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<sup>1</sup>We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.*

<sup>2</sup>We note that the requestor in this situation also is the person who filed the sworn complaint. Several of the exhibits you sent for review include letters or documents from the Texas Ethics Commission, copies of which should also have been sent from the commission to the requestor. Gov't Code §§ 571.123(b), 124(d), .126(b) (concerning notices and information sent to complainant and respondent).

(a) Except as provided by Subsection (b), proceedings at a preliminary review or informal hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, informal hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

(b) An order issued by the commission after the completion of a preliminary review or an informal hearing determining that a violation other than a technical or de minimis violation has occurred is not confidential.

A review of the exhibits indicates that the documents at issue are related to the referenced sworn complaint that was filed with the Texas Ethics Commission (the "commission"). The commission considered whether section 571.140 acts as a broad prohibition against disclosure of an ethics complaint and related documents in Ethics Advisory Opinion No. 8 (1992). Based upon federal court cases that had interpreted similar provisions, the commission determined that such a broad restriction would violate the First Amendment to the United States Constitution. Ethics Advisory Opinion No. 8 at 2-4. *See generally Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978) (law allowing criminal prosecution of a newspaper for printing information about complaint proceedings was unconstitutional); *Doe v. Gonzalez*, 723 F. Supp. 690 (S.D. Fla. 1988) *aff'd* 886 F.2d 1323 (11th Cir. Fla. 1989) (statute prohibiting a complainant from discussing ethics complaint was unconstitutional); *Providence Journal Co. v. Newton*, 723 F. Supp. 846 (D.R.I. 1989) (law prohibiting all public discussion of an ethics complaint was unconstitutional). The commission opinion construed this confidentiality provision to apply only to members and staff of the commission, not to third parties. We defer to the commission's interpretation of its own statute in this situation.<sup>3</sup> Attorney General Opinions JM-1212 at 8 (court will give great weight to administering agency's construction of statute, though not if contrary to clear meaning); JM-1149 at 2 (court will give weight to agency's interpretation of statute) 1990.

Because the commission has interpreted its own confidentiality provision to restrict disclosure of the complaint and related documents only as to its own members and staff, the documents held by the district are not confidential under section 571.140. We note that the complaint and related documents in this situation are held or owned by the district and are therefore subject to chapter 552 as public information within the definition of section 552.021.<sup>4</sup> The requested documents may not be withheld under section 552.101.

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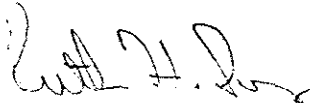
<sup>3</sup>The opinion makes clear that the commission construed the statute narrowly "because a statute is to be construed in a manner that renders it constitutional." Ethics Advisory Opinion No. 8 at 4.

<sup>4</sup>The commission has authority to pursue sworn complaints about violations of laws administered and enforced by the commission, which may include individuals and entities not subject to chapter 552.

You also contend that some of the documents are protected under section 552.107, which protects from disclosure legal advice, opinions and recommendations which are privileged within the context of an attorney-client relationship. Open Records Decision No. 574 (1990) at 2-3. The marked portion of exhibit 15 that specifically concerns your legal opinion as counsel for the district may be withheld. You may not withhold any other information under section 552.107.<sup>5</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID#s 24211, 24612

Enclosures: Submitted documents

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(Footnote continued)

See Gov't Code §§ 571.061 (laws administered by commission), .121 - .140 (sworn complaint procedures). The commission has indicated that the confidentiality provision would not be applied differently if a sworn complaint was filed against a public servant or a private individual. Ethics Advisory Opinion No. 8 at 4 n.4.

<sup>5</sup>You asserted that some of the exhibits might be withheld under section 552.103, which provides an exception for information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

However, we have been advised that the sworn complaint has been resolved. We therefore do not have to consider if this exception would be applicable to the commission's special hearings procedures for a sworn complaint. See Gov't Code § 571.121.

cc: Mr. Don Nicholson  
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(w/o enclosures)

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